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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

IN RE

TESTWELL, INC.,

Debtor.

Chapter 11

Case No. 09-22796 (RDD)

AMENDED STIPULATION LIFTING THE AUTOMATIC STAY TO PERMIT  
CONTINUATION OF STATE COURT PROPERTY  
AND PERSONAL INJURY ACTION  
TO THE EXTENT OF INSURANCE PROCEEDS

WHEREAS, on May 13, 2009 ("Petition Date"), Testwell, Inc. (the "Debtor") filed with this Court its voluntary petition for relief under Title 11, Chapter 11, § 301 of the United States Bankruptcy Code (the "Bankruptcy Code"). The Debtor continues to operate its businesses and manage its assets as a debtor-in possession in accordance with §§1107 and 1108 of the Bankruptcy Code;

WHEREAS, after the Petition Date, a civil action was filed in Supreme Court of the State of New York, County of New York, in which the Debtor was named as a defendant. The caption of the above-mentioned Civil Action is set forth as follows:

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

VINCENT PODLASKI,

Plaintiff,

Index No. 150166/2009

-against-

1765 FIRST ASSOCIATES, LLC, LEON D. DEMATTEIS  
CONSTRUCTION CORP., JAMES F. LOMMA, NEW YORK CRANE &  
EQUIPMENT CORP., SORBARA CONSTRUCTION CORP., THE  
CITY OF NEW YORK, NEW YORK CITY DEPARTMENT OF  
BUILDINGS, MATTONE GROUP, LLC, MATTONE GROUP  
CONSTRUCTION CO. LTD., BRADY MARINE REPAIR CO.,  
HOWARD I. SHAPIRO, HOWARD I. SHAPIRO & ASSOCIATES  
CONSULTING ENGINEERS, P.C., NEW YORK RIGGING CORP.,  
BRANCH RADIOGRAPHIC LABS, INC., TESTWELL, INC., CRANE

**INSPECTION SERVICES, LTD., LUCIUS PITKIN, INC. and TOTAL  
SAFETY CONSULTING, LLC,**

**Defendants.**

**X**

1. Plaintiff Vincent Podlaski, and Defendants City of New York and New York City Department of Buildings in the within captioned state court civil action agree to limit their damages in said action as to the Defendants Debtor, Testwell, Inc., to the limits of the Debtor's insurance coverage in effect on May 30, 2008, the date of Plaintiff Vincent Podlaski.

2. Insurance coverage as referred to in paragraph 1 herein includes all policies of insurance and excess insurance for whatever policy or policies were in effect on the date of loss inclusive of reinsurance, self-insurance, or indemnity agreements which would in whole or in part be available to the Defendants-Debtor Testwell, Inc., for the payment of any judgment and/or settlement in the within state court civil action upon the allegations stated in Plaintiff's Vincent Podlaski complaint.

3. The automatic stay imposed by 11 U.S.C. §362(a) is hereby lifted pursuant to 11 U.S.C. §362(a)(1) as to Plaintiff Vincent Podlaski, and Defendants City of New York and New York City Department of Buildings in the within captioned state court civil action and Plaintiff may proceed on the subject state court civil action.

4. Recovery in the above state court civil action shall be limited to the amount of coverage provided by the Defendants-Debtor's insurance policy and (a) Plaintiff and (b) Defendants (i) City of New York and (ii) New York City Department of Buildings shall have no other claim in the bankruptcy estate and each forever waives the right to file a proof of claim for any amount in excess of insurance coverage.

5. This Stipulation contains the entire agreement between the parties and supercedes all prior agreements and undertakings between the parties relating thereto.

6. This Stipulation can only be amended or otherwise modified by a signed writing executed by the parties.

7. Each person who executed this Stipulation represents that he or she is duly authorized to execute this Stipulation on behalf of the respective parties hereto and that each such party has full knowledge and has consented to the terms of this Stipulation.

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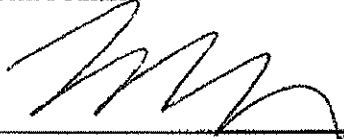

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8. This Stipulation may be executed in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument, and it shall constitute sufficient proof of this Stipulation to present any copy, copies or facsimiles signed by the parties hereto to be charged.

9. This Stipulation and the terms and conditions contained herein, are subject to the approval of the Court.

Dated: New York, New York  
January 12, 2010

<p>TARTER KRINSKY &amp; DROGIN LLP Attorneys for Testwell, inc. Debtor and Debtor-in-Possession</p> <p>BY: _____ IRA R. ABEL 1350 BROADWAY, 11<sup>TH</sup> FLOOR NEW YORK, NEW YORK 10018 Tel: (212) 216-8000 Fax: (212) 216-8001</p>	<p>BERNSTEIN LEVINE CHERNEY LLP Attorneys for Plaintiff Vincent Podlaski</p> <p>BY:  _____ 370 Lexington Avenue, 24<sup>th</sup> Floor New York, New York 10017 (212) 381-9684 (646) 304-9535</p>
<p>FABIANI COHEN &amp; HALL LLP Attorneys for Defendants THE CITY OF NEW YORK</p> <p>BY:  _____ MICHAEL P. TOBIN 570 LEXINGTON AVENUE 4<sup>TH</sup> FLOOR NEW YORK, NEW YORK 10022 (212) 644-4420 (212) 207-8182 Our File No: 857-34972</p>	

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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
In re:

TESTWELL, INC.

Chapter 11

Debtor

Case No. 09-22796 (RDD)

-----X

**AFFIDAVIT IN SUPPORT OF STIPULATION MODIFYING AUTOMATIC  
STAY TO PERMIT CONTINUATION OF STATE COURT PROPERTY AND  
PERSONAL INJURY ACTION TO THE EXTENT OF THE APPLICABLE  
INSURANCE POLICIES: TO THE  
HONORABLE ROBERT D. DRAIN  
UNITED STATES BANKRUPTCY JUDGE:**

City of New York ("Applicant"), by and through their counsel, Fabiani Cohen & Hall, LLP,  
respectfully represent as follows:

1. This affidavit is made in support of City of New York's request for relief from the automatic stay pursuant to §362(d) of the Bankruptcy Code.

**Background**

2. On May 30, 2008, a crane collapsed at the high-rise building/construction /development project at 333 East 91 near the intersection of First Avenue in Manhattan.

3. Upon information and belief, prior to the crane's collapse, Testwell, Inc., the Debtor, was retained to perform tests upon the aforementioned crane. The performance, nature, scope and results of said tests are at significant issue in Vincent Podlaski Index No: 150166/2009 vs. The City of New York. Testwell, Inc. is a defendant in this action.

4. At the time of the occurrence the Debtor maintained applicable liability insurance coverage.

5. On May 13, 2009, the Debtor filed with this Court its voluntary petition for relief under Chapter 11 of the Bankruptcy Code.

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6. Thereafter, State Supreme Court Justice The Honorable Paul G. Feinman issued a stay of each Civil Action pursuant to §362(a) of the Bankruptcy Code.

**RELIEF REQUESTED:**

7. Applicant respectfully requests that this Court so order the attached Stipulation by and between [the Debtor, plaintiff and Applicant] or [Debtor and Applicant].

8. Said Stipulation provides, in relevant part, for the following:

a). [Applicant and plaintiff] or [Applicant], agrees to limit its claims for damages against Debtor, so that the combined damages claimed against the Debtor do not exceed the limits of the Debtor's insurance coverage in effect on May 30, 2008;

b) Insurance coverage, includes all policies of insurance and excess insurance, for whatever policy or policies were in effect on the date of loss inclusive of reinsurance, self-insurance, or indemnity agreements which would in whole or in part be available to the Debtor, for the payment of any judgment and/or settlement in the within the Civil Actions, upon the allegations stated in the complaint in each such Civil Action;

c) The automatic stay imposed by § 362(a) of the Bankruptcy Code is hereby lifted pursuant to § 362(d)(1) of the Bankruptcy Code as to the Civil Actions and [Plaintiff and Applicant] or [Applicant] may proceed on the Civil Actions within the limitations agreed to in the Stipulation; and

d) [Plaintiff and Applicant's] or [Applicant's] recovery from the Debtor shall be limited to the insurance coverage held by Debtor and Applicant shall have no other claim in or against the Debtor or the bankruptcy estate, and forever waives the right to file a proof of claim for any amount in excess of such insurance coverage;

9. As the Debtor's combined liability in the Civil Actions is limited to the applicable insurance coverage limits, there will be no adverse impact on the Debtor or the bankruptcy estate from lifting the automatic stay herein.

10. Applicant has caused the notice of presentment, the stipulation and this Affidavit to be served upon the Debtor's counsel, the United States Trustee, and the Debtor's twenty largest creditors whose names and addresses have been filed with the Court. No committee of unsecured creditors has been appointed in this case.

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**Conclusion:**

11. The applicant does not anticipate objection to the proposed relief.
12. No previous application for the relief sought herein has been made to this or any other court.

Wherefore, the Applicant respectfully prays that this Court so-order the Stipulation modifying the automatic stay pursuant to §362(d) of the Bankruptcy Code.

**Dated: New York, New York  
January 12, 2010**

Yours, etc.,

**FABIANI COHEN & HALL, LLP**



---

**MICHAEL P. TOBIN**  
Attorneys for Defendant  
**THE CITY OF NEW YORK**  
570 Lexington Avenue, 4<sup>th</sup> Floor  
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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
In re:

TESTWELL, INC.

Chapter 11

Debtor

Case No. 09-22796 (RDD)  
-----X

**AMENDED NOTICE OF PRESENTMENT OF STIPULATION MODIFYING  
AUTOMATIC STAY AS TO PERMIT CONTINUATION OF  
MULTIPLE STATE COURT ACTIONS TO  
THE EXTENT OF DEBTOR'S APPLICABLE INSURANCE POLICIES**

**PLEASE TAKE NOTICE**, that upon the Affidavit and the Stipulation ("Stipulation") annexed hereto signed on behalf of both Debtor, **VINCENT PODLASKI** Index No: **150166/2009 vs. The City of New York**, the undersigned will present the annexed Stipulation to be so ordered by the Honorable Robert D. Drain, United States Bankruptcy Judge, at the Hon. Charles L. Brieant Jr. Federal Building and Courthouse, Room 116, 300 Quarropas Street, White Plains, NY, on January 19, 2010 at 12 noon.

**PLEASE TAKE FURTHER NOTICE**, that objections, if any, to the stipulation shall be (i) filed with the Clerk of the Bankruptcy Court on the Court's ECF system; (ii) served upon Tarter Krinsky & Drogin LLP, 1350 Broadway, 11<sup>th</sup> Floor, New York, New York 10018, Attn: Scott S. Markowitz, Esq.; (iii) served upon Fabiani Cohen & Hall, LLP 570 Lexington Ave, New York, NY 10038, Attn: Michael Tobin, Esq.; and (iv) delivered to the chambers of the Honorable Robert D. Drain, United States Bankruptcy Judge, so that same are received on or before 12:00 p.m. on January 19, 2010. ;

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**PLEASE TAKE FURTHER NOTICE**, that if you have no objections to the stipulation, you need not appear at the hearing.

**Dated:** New York, New York  
January 12, 2010

Yours, etc.,

**FABIANI COHEN & HALL, LLP**



**MICHAEL P. TOBIN**  
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